



**The Commonwealth of Massachusetts**

**DEPARTMENT OF**

**TELECOMMUNICATIONS AND ENERGY**

March 12, 2004

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NSTAR Electric

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D.T.E. 03-121

**HEARING OFFICER RULING ON**

**MOTION OF NE DG COALITION TO EXTEND TIME**

**FOR DISCOVERY OF NSTAR ELECTRIC**

**I.. INTRODUCTION**

On October 31, 2003, pursuant to G.L. c. 164, § 94 and 220 C.M.R. §§ 5.00 et seq., Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company ("Companies" or "NSTAR Electric") filed for approval by the Department of Telecommunications and Energy ("Department"), tariffs designed to establish standby rates for large and medium-sized commercial and industrial customers who have their own on-site, self-generation facilities. On November 26, 2003, the Department suspended the operation of the tariffs until June 1, 2004. On January 16, 2004, the Companies refiled the tariffs in this docket, thereby extending the period by which the Department could suspend the operation of the rates. On January 29, 2004, the Department suspended the operation of the tariffs until August 1, 2004, in order to investigate the propriety of the Companies' proposed tariffs.

On February 10, 2004, the Department conducted a public hearing and procedural conference. The Attorney General of the Commonwealth ("Attorney General") intervened pursuant to G.L. c. 12, § 11E. The Department granted full intervenor status to the following entities: Associated Industries of Massachusetts; the Boston Public Schools; Co-Energy America, Inc.; the Conservation Law Foundation, Inc.; the Division of Energy Resources; FuelCell Energy, Inc.; Fitchburg Gas and Electric Light Company; Low Income Weatherization and Fuel Assistance Network and Mass Community Action Program Directors Association; Massachusetts Electric Company; National Association of Energy Service

Companies, Inc.; the NE DG Coalition<sup>1</sup>; the Solar Energy Business Association of New England; Siemens Building Technologies, District One; The Energy Consortium; UTC Power, LLC; Western Massachusetts Electric Company; the Western Massachusetts Industrial Customer Group. The Department also granted limited participant status to the following entities: Allied Utility Network, LLC; the E-Cubed Company, L.L.C.; Dgsolutions LLC; Energy Concepts Engineering, PC; Keyspan Energy Delivery New England; Pace Law School Energy Project; Plug Power, Inc.; Predicate, LLC; Wyeth Pharmaceutical, Inc; and Constellation NewEnergy, Inc.<sup>2</sup>

At the procedural conference, the Hearing Officer established a procedural schedule that provided for, among other things, the close of discovery on the Companies' Filing at March 5, 2004 (Tr. A at 89).

On March 3, 2004, the NE DG Coalition ("NEDGC") filed with the Department a Motion to Extend Time for Discovery of NSTAR Electric (the "Motion"). By its Motion, NEDGC requests an extension from March 5, 2004 to March 12, 2004 to issue discovery on the Companies' filing. On March 9, 2004, NSTAR Electric filed its opposition to the Motion, ("NSTAR Electric Response").

## II. THE MOTION

By its Motion, NEDGC requests a one-week extension to March 12, 2004, to issue discovery on the Companies' filing (Motion at 1). NEDGC requests this extension to allow it to review fully the discovery responses to be provided by NSTAR Electric and to issue additional follow-up information requests to NSTAR Electric (id.). NEDGC states that as of the date of its Motion, it had not received any responses to its two sets of information requests issued on February 19, 2004 and February 24, 2004 (id. at 2). NEDGC contends that if it receives responses from NSTAR Electric on March 4, 2004, NEDGC will not have adequate time to digest the responses and formulate any follow-up inquiries (id.). NEDGC asserts that the extension will facilitate a more complete review and analysis of the responses to information requests, and the Department will have a better factual record (id. at 3).

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<sup>1</sup> The NE DG Coalition consists of the following companies: American DG, Inc.; Aegis Energy Services, Inc.; OfficePower L.L.C.; Equity Office Properties Trust, Inc.; Northern Power Systems, Inc.; RealEnergy, Inc.; Tecogen Inc.; and Turbosteam Corporation.

<sup>2</sup> The following entities refer to themselves as the Joint Supporters: Allied Utility Network, LLC; the Boston Public Schools; Co-Energy America, Inc.; The E-Cubed Company, LLC; Dgsolutions, LLC; Energy Concepts Engineering, PC; National Association of Energy Service Companies, Inc.; Pace Law School Energy Project, Predicate LLC, and Siemens Building Technologies, District One.

### III. RESPONSE TO THE MOTION

NSTAR Electric opposes the Motion, asserting that more time is unnecessary and is inconsistent with the procedural schedule established by the Department (NSTAR Electric Response at 1). NSTAR Electric states that all parties, including counsel for NEDGC, participated in the development of the procedural schedule at the February 10<sup>th</sup> procedural conference (id.). NSTAR Electric asserts that NEDGC's claim that, without an extension, it will not have adequate time to pose follow-up questions to its earlier discovery does not support an extension (id. at 2). NSTAR Electric contends that NEDGC and other parties will have received responses to 155 information requests before the time for intervenors to file direct cases (id.). NSTAR Electric contends that some of the questions in NEDGC's second set of information requests, and most questions in its third and fourth sets, represent follow-up questions (id.). NSTAR Electric further argues that the procedural schedule was developed after an extensive discussion among the parties, which by necessity reflected a delicate balance between the rights and needs of all parties to the case, and including the requirements of the Department (id. at 2-3). NSTAR Electric asserts that there are no unforeseen circumstances that would warrant the Department reconsidering the existing procedural schedule (id. at 3).

### IV. ANALYSIS AND RULING

I do not find that the interests of NEDGC require an extension time for discovery on NSTAR Electric's filing. The existing procedural schedule was developed at the February 10<sup>th</sup> procedural with the involvement of the parties. In fact, counsel for NEDGC was present at the procedural conference and participated in the discussion that led to the establishment of the procedural schedule. No party appealed the procedural schedule established by the Hearing Officer to the Commission. Under the procedural schedule, NEDGC had the opportunity to issue discovery to NSTAR Electric in time to conduct follow-up discovery. Thus, I cannot find that NEDGC's interests or rights requires the addition to the schedule of more time for discovery on NSTAR Electric's filing.

In establishing a procedural schedule for the orderly conduct of an investigation within the six-month time period mandated by the Legislature, the Department balances the rights of the parties, the need to develop a full and complete record, and the requirements for the Department to deliberate the issues and to issue its decision. The existing procedural schedule appropriately accounts for this balance, and there is no requirement to re-balance the schedule to favor NEDGC's request.

I do find that the record in this case may benefit from follow-up discovery from NEDGC to NSTAR Electric. NEDGC may be better prepared for hearings (for both direct and rebuttal cases) with the benefit of some responses to follow-up questions to NSTAR Electric. Of course, a balance is necessary in determining the extent of any additional discovery. In balancing the benefits to the record of additional follow-up discovery with the

burden to NSTAR Electric and to the procedural schedule, I find that the following limitations shall apply to the allowance of follow-up discovery:

1. Follow-up discovery to NSTAR Electric may be issued only by NEDGC;
2. NEDGC may issue one set of follow-up information requests to NSTAR Electric no later than March 12, 2004;
3. This additional set of information requests is limited to ten questions, with the caution that sub parts to questions must not be used to unfairly expand the number of questions; and
4. The information requests in this additional set shall be limited to follow up to NEDGC's previous information requests.

This Ruling does not otherwise modify the existing procedural schedule, which shall remain in effect.

Accordingly, the motion of the NE DG Coalition to Extend Time for Discovery of NSTAR Electric is GRANTED subject to the limitations contained herein.

Pursuant to 220 C.M.R. § 1.06(6)(d)3, any party may appeal this Ruling to the Commission by the filing of a written appeal no later than March 16, 2004, with any response to an appeal due no later than March 18, 2004.

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John Cope-Flanagan  
Hearing Officer

cc; Commission  
Mary Cottrell, Secretary  
Andrew Kaplan, General Counsel